

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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DIRECTOR

August 12, 1992  
AO-92-18

The Honorable David H. Locke  
Office of the Republican Floor Leader  
Massachusetts Senate  
State House  
Boston, MA 02133

Re: Legal Expenses

Dear Senator Locke:

This letter is in response to your May 15, 1992, request for an advisory opinion as to whether your political committee may pay for certain legal expenses.

You state that a complaint was filed with the State Ethics Commission by one of your constituents alleging that you had acted improperly in sponsoring two amendments to the FY 1992 general appropriation act. You also state that the complaint was followed by the constituent publishing her action in several newspapers which circulate in your district. In addition, the constituent also brought separate legal actions against you, and your aide, Lewis Howe. This event also generated negative publicity, even though both complaints were later dismissed.

The State Ethics Commission then conducted an informal review of the allegations. You further state that the negative publicity and the potential negative impact upon your 1992 reelection campaign prompted you to hire an attorney. The attorney was to handle all aspects of the administrative proceedings which follow the filing of a complaint with the State Ethics Commission. These events resulted in articles appearing in the following publications: The Newton Graphic, The Wellesley Townsman, The Attleboro Sun Chronicle, The Needham Times, The Dover Sherborn Press, The Middlesex News, and The Dover Tab. Due to the threat to your political reputation by the filing of the complaint, and the accompanying publicity generated by the series of events leading to the informal review by the State Ethics Commission, you asked whether your political committee may pay for the attorney fees incurred.

Section 6 of M.G.L. c.55 states, in pertinent part:

[A] political committee, duly organized, may receive, pay and expend money or other things of value for the enhancement of the political future of the candidate . . . for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use . . .

The regulations promulgated pursuant to section 6 of M.G.L. c.55 prohibit the payment of expenses relative to civil suits or administrative proceedings, with certain exceptions. Specifically, 970 C.M.R. 2.06(6)(a)(3)(c) exempts "expenses relative to necessary legal action to protect or further the interests of the political committee."

This Office has previously permitted a candidate's committee to make expenditures in connection with certain civil actions (see AO-85-16 and AO-90-21), as well as State Ethics Commission investigations (see AO-91-08). The Commission's investigation in this case arises out of the performance of your responsibilities as a public official. However, the question posed by the regulations is whether the legal expenses associated with the administrative proceeding are "necessary" and designed "to protect or further the interests of the political committee." 970 C.M.R. 2.06(6)(a)(3)(c).

This Office's approach in AO-91-08 is instructive where there has been a publicized filing of a complaint with the State Ethics Commission:

Clearly, the fundamental issues of integrity and reputation are immediately called into question by a Commission investigation. The elected official usually must respond to such issues in the public forum while also responding to the specific requests of the Commission. A successful public response to the investigation, or equally, an unsuccessful response, would certainly have a significant impact on the election campaign of a candidate.

By calling into question a candidate's reputation and integrity, an Ethics Commission review, if made public by the complaint or otherwise, is inextricably related to one's political future. As such, legal expenditures are "necessary" or designed "to protect or further the interests of the political committee," and are therefore in compliance with 970 C.M.R. 2.06(6)(a)(3)(c).

Please note, however, that it is not always the case that a political committee may pay for legal expenses relating to an State Ethics Commission investigation. The extent to which the following factors have been satisfied must be considered:

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1. Public filing of a complaint with the State Ethics Commission.
2. The filing and/or other events generating significant publicity through print or broadcast media.
3. Due to the public nature of the attacks upon the candidate's integrity, and the impact this has had upon his or her political reputation, these issues are likely to be a factor in the candidate's bid for reelection.

These factors are offered to provide guidance to a political committee seeking to pay for its candidate's legal expenses incurred due to a Commission review or investigation. Under this analysis it is apparent that your committee satisfies the conditions outlined by the three factors.

For the reasons set forth above, it is the opinion of this Office that expenditures by your political committee to reimburse you for legal expenses arising from the State Ethics Commission investigation would be permitted under section 6 of M.G.L. c.55, and the pertinent regulations.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55. Please do not hesitate to contact the Office if you have any additional questions.

Very truly yours,

  
Mary F. McTigue  
Director